

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
KEVIN M. EPSTEIN
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE:	§	
	§	
BENJAMIN JOE GIRON,	§	CASE NO. 21-30070-HCM
	§	CHAPTER 11
	§	
	§	Hearing Date: Not Requested
DEBTOR.	§	

MOTION OF THE UNITED STATES TRUSTEE TO DISMISS CASE

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, KEVIN M. EPSTEIN, THE UNITED STATES TRUSTEE for Region 7 ("UST"), through the undersigned counsel, pursuant to 11 U.S.C. § 1112 and respectfully moves for an order dismissing the case and represents as follows:

I. BACKGROUND FACTS

1. This case was commenced upon the filing of a voluntary petition under Chapter 11 of the Bankruptcy Code on February 2, 2021. The debtor has operated as a debtor in possession since the filing of the case. The debtor elected to file under subchapter V of the Bankruptcy Code. Brad Odell was appointed as the Subchapter V Trustee.

2. The debtor has not filed the monthly operating report for February 2021.

3. The UST alleges upon information and belief that the debtor's group homes are being foreclosed and/or the leases are being terminated. Without the operations from the group homes, it does not appear that the debtor will be able to confirm a plan of reorganization.

II. THIS CASE SHOULD BE DISMISSED.

4. Under section 1112(b) of the Bankruptcy Code, the Bankruptcy Court shall dismiss a case or convert a case to chapter 7, whichever is in the best interest of the creditors and the estate, if the movant establishes cause, unless the Court finds that a chapter 11 trustee or examiner is in the best interests of the creditors and the estate or the Court finds and specifically identifies unusual circumstances that establish that conversion or dismissal of the case is not in the best interest of creditors and the estate. 11 U.S.C. § 1112(b).

5. Here, the case should be dismissed. Timely and accurate financial disclosure is the life blood of the Chapter 11 process." *In re Berryhill*, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991). Because monthly operating reports are the means by which the

creditors, the Court and the United States Trustee can monitor a debtor's post-petition operations, the failure to file monthly operating reports by itself constitutes sufficient cause to warrant dismissal of this chapter 11 case or conversion to chapter 7. 11 U.S.C. § 1112(b)(4)(F); *Roma Group, Inc. v. Office of the United States Trustee (In re Roma Group, Inc.)*, 165 B.R. 779, 780 (S.D.N.Y. 1994) (failure to file monthly operating reports "undermines the Chapter 11 process and constitutes cause for dismissal or conversion"); *In re Bacon*, 52 B.R. 52, 53-54 (Bankr. N.D. Iowa 1985) (failure to file monthly operating reports is sufficient "cause" to warrant dismissal of chapter 11 case because "creditors are not being provided the basic financial data necessary to make decisions regarding their best interests"). Without the reports, the Court, UST, the Subchapter V Trustee and creditors cannot know whether the debtor is paying its debts as they come due or whether it is generating sufficient cash flow to fund a plan of reorganization.

6. Because the debtor is not fulfilling the obligations as a chapter 11 debtor by filing monthly operating reports, the case should be dismissed. 11 U.S.C. § 1112(b)(4)(F).

7. Furthermore, the UST alleges there is cause to dismiss the case due to continuing diminution of the estate and the absence of a reasonable likelihood of rehabilitation. 11 U.S.C. §1112(b)(4)(A). The debtor has not proposed a plan to pay creditors and does not appear to be able to do so due the losses of the group homes. The UST alleges upon information and belief that the debtor is continuing to incur administrative expenses in this case with no reasonable likelihood of rehabilitation. Therefore, there is cause to dismiss the case.

8. The UST submits that dismissal is in the best interests of creditors. The debtor does not appear to have any meaningful non-exempt assets available for the payment of unsecured claims.

9. If the case is dismissed, the UST requests that the order dismissing the case provide for payment of any quarterly fees owed to the UST. 28 U.S.C. § 1930.

WHEREFORE, the UST prays that the Court enter an order dismissing the case and for any and all further relief as is equitable and just.

Respectfully submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE
REGION 7
Southern and Western Districts of Texas

By: /s/James W. Rose, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION OF THE UNITED STATES TRUSTEE DISMISS CASE, was served upon the parties on the attached service by United States Mail, first class, postage prepaid, and/or by electronic means for all Pacer system participants on this the 26th day of March, 2021.

/s/ James W. Rose, Jr.
James W. Rose, Jr.
Trial Attorney

Label Matrix for local noticing
0542-3
Case 21-30070-hcm
Western District of Texas
El Paso
Thu Mar 25 15:57:44 CDT 2021

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